note taken merely as collateral security for an antecedent debt may enforce it against an indorser, in fraud of whose rights it has been diverted from the purpose for which it was made; that the former rule in this State has been changed by section 51 of the Negotiable Instruments Law; and that the new statutory rule includes negotiable instruments which have been given as collateral security merely.

The law as far as the Supreme Court is concerned would seem to be well settled against the exclusion of the equities when a note has been given merely as collateral security for an antecedent debt. It is to be hoped, however, as the question involved is one of great importance to the commercial world, that it will soon be raised in the Court of Appeals for finally authoritative determination. The reasoning of the opinions delivered in the Appellate Division is cogent, but also it must be conceded that there is force in the contention that a change of the rule of New York as originally laid down in *Coddington* v. *Bay* (20 Johns, 637) was contemplated. Judge Werner shows that the New York rule is contrary to that of England, the Federal courts and many States. Where a statute in identical or substantially similar language is passed by the Legislatures of several States, pursuant to a co-operative movement for a uniform rule of law, the presumption is a fair one that modification of existing law is intended when necessary for the general purpose in view. It is desirable that the Court of Appeals have opportunity of saying whether such object of uniformity has been accomplished so as to include the State of New York. The decision of the Supreme Court of North Carolina in *Brooks* v. *Sullivan* (Nov. 1901, 39 N. E. 822) is in point by way of illustration and argument. That court said:

"The only question is whether, when a negotiable note is transferred before maturity as collateral security for a pre-existing debt, the assignee is such holder for value that he takes free from equities of which he had no notice. The Negotiable Instruments Statute (Laws 1899, chap. 733, secs. 25-27), settles that such is the case now, to the extent of the debt secured, but that is a change of the law which was previously otherwise (*Holderly* v. *Blum*, 22 N. C. 51; *Harris* v. *Horner*, 21 N. C. 455, 30 Am. Dec. 182; *Potts* v. *Blackwell*, 56 N. C. 449). This case is governed by the law as it stood prior to the Act of 1899."

By section 53 of the New York Act, it is provided that a person who has a lien on the instrument is a holder for value to the extent of the lien, and by section 51 it is declared that an antecedent debt is value. Construing these two sections together, the argument is forcible that a person who holds the instrument as collateral security for an antecedent debt, and who therefore has a lien thereon for that debt, is a holder for value to that extent.—*New York Law Journal.*

DECISION AND OBITER DICTUM.—In an article on the above subject in this journal for May 6, 1904, there was cited the decision of the United States Circuit Court of Appeals, Eighth Circuit, in *Union Pacific R'y* v.

Mason City, etc. (128 Fed. 230). The court formulated the following proposition as part of its syllabus:

"Where a court places its decision of the ultimate legal issue before it upon its decisions of two legal questions which were pertinent to the issue, debated at the bar, considered and determined in the opinion, the decision of either one of which is sufficient to sustain the determination of the ultimate issue, the decision of each of the two questions and of every pertinent legal question decided in reaching either decision has the binding force of an adjudication, and is not a mere *obiter dictum.*"

We said: "The soundness of the doctrine so laid down is sufficiently obvious, and from one point of view it might seem that the Circuit Court of Appeals discussed a legal axiom too seriously and elaborately. At the same time it may be of practical value that at least one court has taken pains to emphasize a truth which, however indisputable, is quite frequently disregarded in practice. It is not at all uncommon, the wish being father to the thought, for attorneys to distinguish a reported case from one at bar on the ground that expressions in the opinion in the former were unnecessary and *obiter* when, in reality, the authority may be controlling upon all the grounds considered. It is sometimes no light task to separate what is organically part of a decision from reflections and comments which do not enter into it. But, as the Circuit Court of Appeals suggests, one must always beware of the tendency to argue that because a court intended to decide two points it actually decided nothing."

In the same litigation the Supreme Court of the United States (26 Sup. Ct. R. 19) now lays down the proposition that a case is of equal authority upon each of two distinct and sufficient grounds upon which an appellate court rests its affirmance of a judgment, although only one of those grounds was considered in the court below. On this point the Supreme Court said:

"Of course, where there are two grounds, upon either of which the judgment of the trial court can be rested, and the appellate court sustains both, the ruling on neither is *obiter*, but each is the judgment of the court, and of equal validity with the other. Whenever a question fairly arises in the course of a trial, and there is a distinct decision of that question, the ruling of the court in respect thereto can, in no just sense, be called mere *dictum* (*Florida C. R. Co.* v. *Schutte*, 103 U. S. 118, 26 L. Ed. 327), in which this court said (p. 143, L. Ed. 336):

" 'It cannot be said that a case is not authority on one point because, although that point was properly presented and decided in the regular course of the consideration of the cause, something else was found in the end which disposed of the whole matter. Here the precise question was properly presented, fully argued and elaborately considered in the opinion. The decision on this question was as much a part of the judgment of the court as was that on any other of the several matters on which the case as a whole depended.' "—*New York Law Journal.* See, also, 10 VA. LAW REG. 458.